

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Desert Television LLC  
TV Station KPSP-LP  
Cathedral City-Palm Springs, CA

)  
)  
)  
)  
)  
)  
)

File No. EB-03-SD-017  
NAL/Acct. No. 200332940006  
FRN: 000-497-4044

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**By the Enforcement Bureau: San Diego Office**

**Released: March 31, 2003**

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Desert Television LLC (“Desert”), the licensee of Class A Television Broadcast (“Class A”) station KPSP-LP, apparently willfully and repeatedly violated Sections 11.35 and 11.61 of the Commission’s Rules (“Rules”),<sup>1</sup> by failing to ensure that required Emergency Alert System (“EAS”) equipment was operational, failing to receive and retransmit required monthly and weekly EAS tests, failing to determine the cause of the failure to receive the required tests, and failing to maintain required EAS logs. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>2</sup> that Desert Television LLC is apparently liable for forfeiture in the amount of eight thousand dollars (\$8,000).

**II. BACKGROUND**

2. On November 13, 2002, an agent from the Federal Communications Commission’s (“FCC”) San Diego office attempted to conduct a routine inspection of the EAS equipment of station KPSP-LP. According to FCC records, a station license for station KPSP-LP had been issued to Desert on July 9, 2001, sixteen months prior to the inspection. During the inspection the agent found that EAS equipment at the station’s main studio site was not operational. The station’s chief engineer advised the agent that the EAS equipment had not been in service since they moved to the new facility approximately eleven weeks prior because new antenna connector parts were needed and had been back ordered. The repair parts had arrived on November 11, 2002, and would be installed by

---

<sup>1</sup> 47 C.F.R. §§ 11.35 and 11.61.

<sup>2</sup> 47 U.S.C. § 503(b).

November 15, 2002, to make the EAS equipment operational. The San Diego agent advised Desert station personnel during the inspection of the importance of maintaining operational EAS equipment and conducting the required monthly and weekly EAS test, and sent a reminder to Desert's chief engineer on November 20, 2002, advising that Section 11.35(c) of the Rules requires notification to the San Diego District Director if any additional delay occurs in getting the EAS equipment operational. The San Diego District Office received no request from Desert for additional time to repair the KPSP-LP EAS equipment.

3. A follow up inspection on February 12, 2003, by an agent from the FCC's San Diego office revealed that KPSP-LP had received just one required weekly EAS test during the three months since the November 13, 2002, inspection. That single EAS weekly test was received on February 11, 2003, the day before the inspection. Although the EAS equipment appeared to be operational at the time of the February 12, 2003, inspection, the station records contained no evidence that any required monthly or weekly EAS test had been received or retransmitted between November 13, 2002 and February 10, 2003. The station records also did not indicate any attempt by station personnel to ascertain why the EAS equipment had not been operational and the required monthly and weekly EAS tests had not been conducted since the date of the inspection on November 13, 2002, until February 11, 2003. Nor could the station's staff explain the delay in reestablishing the station's EAS operability.

### **III. DISCUSSION**

4. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.<sup>3</sup> The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>4</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>5</sup>

5. Commission licensees are responsible for familiarizing themselves and complying with applicable statutes and Commission Rules and policies, regardless of the length of time the licensee has been engaged in broadcasting.<sup>6</sup> The Rules provide that all broadcast stations, including Class A television stations, are part of the nationwide EAS network and are categorized as participating as national

---

<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>5</sup> Section 312(f)(2), 47 U.S.C. § 312(f)(2), which also applies to Section 503(b), provides: "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

<sup>6</sup> See *Bay Television, Inc.*, 10 FCC Rcd 11509 (1995) (rejecting licensee's request for lenient treatment because it had been on the air for barely six months.); *Radio One Licensees, Inc.*, Memorandum Opinion and Order, DA 02-219 (Enf. Bur. Jan 31, 2002) (rejecting licensee's request for lenient treatment because the station had been acquired less than six months before, noting also that the licensee was an experienced broadcaster).

EAS sources unless a station affirmatively requests authority to not participate.<sup>7</sup> The EAS provides the President and state and local governments with the capability to provide immediate and emergency communications and information to the general public.<sup>8</sup> State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management officials.<sup>9</sup>

6. The Rules specifically require broadcast stations, including Class A television stations,<sup>10</sup> to install and make operational EAS equipment (encoders, decoders, attention signal generators and receivers) so that monitoring and transmitting functions are available during the times whenever the station is in operation.<sup>11</sup> The Rules also require broadcast stations to (a) receive monthly EAS tests from designated local primary EAS sources and retransmit the monthly test within 60 minutes of its receipt and (b) conduct tests of the EAS header and EOM codes at least once a week at random days and times.<sup>12</sup> Stations must also determine the cause of any failure to receive the required EAS tests, and make appropriate entries in the station log indicating why the required tests are not received.<sup>13</sup>

7. If a broadcast licensee's EAS equipment fails and must be taken out for service, the Rules require the licensee to note in the station log that the EAS equipment failed and the reasons why the failure occurred.<sup>14</sup> If the failure cannot be corrected within 60 days, the Rules require the licensee to make an informal request to the District Director of the FCC field office serving the area for additional time to make necessary repairs.<sup>15</sup> The request must explain fully why additional time is necessary and when repairs are expected to be completed.

8. Based on the evidence, we find that Desert willfully and repeatedly violated Sections 11.35 and 11.61 of the Rules by failing to have EAS equipment fully operational at KPSP-LP from approximately September 2002 when the station relocated until February 11, 2003, and by failing to receive and retransmit the required monthly and weekly EAS tests, failing to ascertain why the required tests were not conducted and failing to log any EAS equipment failures. Desert was advised by an FCC agent during the November 13, 2002, inspection of the importance of maintaining operational EAS equipment and conducting the required tests. Yet, on the date of second inspection, KPSP-LP had only one EAS printout indicating that the station could receive the first local primary (LP-1) station. There were no records that indicated why KPSP-LP was not

---

<sup>7</sup> 47 C.F.R. §§ 11.11 and 11.41.

<sup>8</sup> 47 C.F.R. §§ 11.1 and 11.21.

<sup>9</sup> 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources.

<sup>10</sup> 47 C.F.R. § 11.11.

<sup>11</sup> 47 C.F.R. § 11.35.

<sup>12</sup> 47 C.F.R. § 11.61. The required monthly and weekly tests are required to conform with the procedures in the EAS Operational Handbook. *See also, Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, EB Docket No. 01-66, *Report and Order*, FCC 02-64 (Feb. 26, 2002); 67 Fed Reg 18502 (April 16, 2002) (effective May 16, 2002, the required monthly EAS test must be retransmitted within 60 minutes of receipt.)

<sup>13</sup> 47 C.F.R. § 11.35.

<sup>14</sup> 47 C.F.R. § 11.35(b).

<sup>15</sup> 47 C.F.R. § 11.35(c).

## Federal Communications Commission

---

receiving the first and second local primary stations required monthly and weekly tests from November 17, 2002 (the date the station's EAS equipment was ostensibly repaired), through February 10, 2002. Also, there were no records that indicated why KPSP-LP was not transmitting the required weekly or monthly tests during this same period.

9. We also find that Desert willfully violated Section 11.35 of the Rules by failing to make an informal request to the FCC's San Diego office for additional time to repair defective EAS equipment. Desert was reminded after the first inspection of the requirements of Section 11.35(c) via electronic message from the FCC's San Diego office on November 20, 2002. The FCC San Diego office received no informal request concerning EAS equipment from KPSP-LP.

10. Based on the evidence before us, we find that Desert Television LLC, willfully and repeatedly violated Sections 11.35 and 11.61 of the Rules, by failing to have EAS equipment operational, by failing to monitor, receive and retransmit required monthly and weekly EAS tests, and by failing to ascertain why the required tests were not conducted and failing to log any EAS equipment failures. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*,<sup>16</sup> the base forfeiture amount for EAS equipment not installed or operational is \$8,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>17</sup> In applying Section 1.80(b)(4) of the Rules and the statutory factors to the instant case, we find no compelling evidence to support any adjustments to the base forfeiture amounts. Therefore, a total forfeiture in the amount of \$8,000 is warranted.

### IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Desert Television LLC, is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of eight thousand dollars (\$8,000) for violating Sections 11.35 and 11.61 of the Commission's Rules.<sup>18</sup>

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Desert Television LLC, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance

---

<sup>16</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>17</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>18</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80, 11.35 and 11.61.

## Federal Communications Commission

---

Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Account No. 200332940006 and FRN 000-497-4044.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12<sup>th</sup> Street, S.W., Washington, DC 20554 and must include the NAL/Acct. No. 200332940006. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operation Group, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.<sup>19</sup>

16. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Federal Communications Commission, Enforcement Bureau, Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities ("OCBO") set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

17. IT IS FURTHER ORDERED THAT this NOTICE OF APPARENT LIABILITY shall be sent, by certified mail, return receipt requested, to Desert Television LLC, 31276 Dunham Way, Thousand Palms, California 92276.

FEDERAL COMMUNICATIONS COMMISSION

William R. Zears Jr.  
District Director - San Diego Office

---

<sup>19</sup> See 47 C.F.R. § 1.1914.

## **Federal Communications Commission**

---

Enc: Attachment A

## FCC List of Small Entities

As described below, a “small entity” may be a small organization,  
a small governmental jurisdiction, or a small business.

(1) Small Organization	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
(2) Small Governmental Jurisdiction	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
(3) Small Business	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
Industry Type	Description of Small Business Size Standards
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – Small Cable Company has 400,000 Subscribers Nationwide or Fewer  \$12.5 Million in Annual Receipts or Less
Cable and Other Program Distribution	
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	
<b>Note:</b> With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 C.F.R. §121.104 and 13 C.F.R. § 121.106, respectively.	
<i>International Services</i>	
International Broadcast Stations	
International Public Fixed Radio (Public and Control Stations)	

Fixed Satellite Transmit/Receive Earth Stations	\$12.5 Million in Annual Receipts or Less
Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
Mass Media Services	
Television Services	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	
	Auction Special Size Standard – <b>Small Business</b> is less than \$40M in annual gross revenues for three preceding years
Wireless and Commercial Mobile Services	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	
220 MHz Radio Service – Phase II Licensees	
700 MHZ Guard Band Licensees	Auction special size standard - <b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
Private and Common Carrier Paging	
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - <b>Small Business</b> is \$40M or less in annual gross revenues for three previous calendar years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Broadband Personal Communications Services (Block F)	
Narrowband Personal Communications Services	
Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	
800 MHz Specialized Mobile Radio	Auction special size standard - <b>Small Business</b> is \$15M or less average annual gross revenues for three preceding calendar years
900 MHz Specialized Mobile Radio	
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	1,500 Employees or Fewer
Fixed Microwave Services	
Public Safety Radio Services	<b>Small Business</b> is 1,500 employees or less <b>Small Government Entities</b> has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	



	1,500 Employees or Fewer
Personal Radio Services	N/A
Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	<b>Small Business</b> is \$40M or less average annual gross revenues for three preceding years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three years
39 GHz Service	
Multipoint Distribution Service	Auction special size standard (1996) – <b>Small Business</b> is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – <b>Small Business</b> has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	\$12.5 Million in Annual Receipts or Less
Instructional Television Fixed Service	
Local Multipoint Distribution Service	Auction special size standard (1998) – <b>Small Business</b> is \$40M or less average annual gross revenues for three preceding years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three years
218-219 MHZ Service	First Auction special size standard (1994) – <b>Small Business</b> is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – <b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less
24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	<b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
<b>Miscellaneous</b>	
On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	750 Employees or Fewer
Audio and Video Equipment Manufacturers	
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)

